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February 7, 2018

Case No. 1:16-cv-02379-DLC

LightBox Ventures LLC v. 3rd Home Limited

Honorable Denise L. Cote
United State District Judge
USDC – SDNY
500 Pearl Street, Room 1610
New York, NY 10007

LETTER MOTION FOR STAY OF PAYMENT

Dear Judge Cote:

This case is set for trial on March 12, 2018. Plaintiff now contends that a binding settlement was reached and has filed a Motion to enforce it [Doc. 178]. The Defendants [collectively, "3HL"] have filed their opposition papers, and did so in advance of the Court's deadline in order to obtain clarity as soon as possible [Docs. 131-133].

However, a side issue has now developed whereby 3HL is stuck in the crossfire between Plaintiff's current counsel and Plaintiff's former counsel (who alleges an attorneys' lien). That crossfire relates to the payment of the \$38,888.01 in sanctions recently awarded [Doc. 172].

Due to the dispute between Plaintiff and its former lawyer, and for other reasons set out below, 3HL moves for a Stay of payment of the monetary sanctions pending trial (and resolution of the settlement Motion). In support of this request, 3HL states as follows:

Per the Court's Orders of November 13-14, 2017 [Docs. 149, 151], there are three (3) primary issues remaining to be litigated; to wit:

- The determination of whether Lightbox's costs in building the website are in excess of \$60,000;
- Whether Lightbox is entitled on its Breach of Fiduciary claims to all or a share of the \$52,500 paid to 3HL by the exclusive brokers; and
- 3HL's Counter-Claim and Third-Party Claims against Lightbox and Mr. Ellner under the Lanham Act and the Anti-Cyber Squatting Consumer Protection Act.

The Offsetting Claims and Attorney Lien Claim

1. Lightbox's website claim is whether the costs total \$62,500 or the higher number of \$68,000. Regarding the second issue, Lightbox seeks to recover all or a portion of the exclusive brokers' fees which totaled only \$52,500. Meanwhile, 3HL's Counter-Claim and Third-Party Claims provide it with the right to recover statutory damages of up to \$100,000 per violation (and there were five alleged herein). Thus, the Counter-Claim and Third-Party Claim could substantially overcome the monetary aspects of Lightbox's claims, even with the sanction award.

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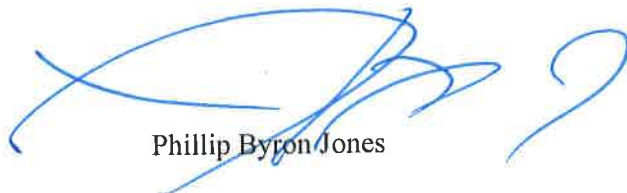
2. There is then the issue of the Court's recent award of Sanctions, which totaled \$38,881.01. Plaintiff's current counsel is demanding that the funds be turned over to him. Meanwhile, Plaintiff's former counsel has filed suit against the Plaintiff. That law firm has also given 3HL notice of an alleged lien for attorneys' fees and advised 3HL that "*no funds... pass to*" Plaintiff or its current counsel while that collection case is pending.

Thus, the current predicament is as follows:

1. Plaintiff is insisting that the \$38,881.01 be delivered to its current counsel;
2. Plaintiff's former counsel contends that any payments made should be directed to it; and
3. The amount of the sanction is dramatically less than the amounts 3HL seeks to recover on its Counter-Claim and Third-Party Claims. These claims are significant, given the fact that 3HL successfully overcame the Plaintiff's Motion to have those claims dismissed pursuant to Rule 56. Hence, those Counter-Claims and Third-Party Claims are scheduled on the Court's Docket for trial on March 12, 2018.

Therefore, 3HL respectfully requests that any obligation to pay the Sanctions be Stayed pending the resolution by this Court of Plaintiff's settlement Motion, and if not successful, then resolution of all remaining claims, Counter-Claims and Third-Party Claims.

Respectfully,



Phillip Byron Jones

PBJ/sj

c: Mr. Brem Moldovsky
Third Home Limited

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